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Angie Chen Button  
Joe Deshotel

John Frullo  
Mary González  
Donna Howard

Ken King

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Eddie Lucio III  
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Jim Murphy  
Andrew Murr  
Toni Rose

# HOUSE RESEARCH ORGANIZATION

## daily floor report

Monday, August 30, 2021  
87th Legislature, Second Called Session, Number 15  
The House convenes at 2 p.m.

Two bills are on the General State Calendar for second reading consideration today. The bills analyzed in today's *Daily Floor Report* are listed below.

HB 5 by Bonnen	Making supplemental appropriations; restoring legislative funding	1
SB 4 by Lucio, Jr.	Regulating use of abortion-inducing drugs; creating an offense	8



Alma Allen  
Chairman  
87(2) - 15

SUBJECT: Making supplemental appropriations; restoring legislative funding

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 22 ayes — Bonnen, M. González, Ashby, C. Bell, Capriglione, Dean, Dominguez, Gates, Holland, Howard, A. Johnson, Julie Johnson, Morrison, Raney, Rose, Schaefer, Stucky, E. Thompson, VanDeaver, Walle, Wilson, Zwiener

0 nays

5 absent — Jarvis Johnson, Minjarez, Sherman, Toth, Wu

WITNESSES: For — Jamie McCormick, Texas Alliance of Child and Family Services; *(Registered, but did not testify: Andrew Homer, Texas CASA; Lauren Rose, Texas Network of Youth Services; Timothy Lee, Texas Retired Teachers Association; Ash Hall; Thomas Parkinson)*

Against — None

On — David Kinsey, Jaime Masters, and Trevor Woodruff, Department of Family and Protective Services; Leonardo Lopez, Texas Education Agency; Wayne Pulver, Texas Legislative Budget Board; Monty Exter, The Association of Texas Professional Educators; *(Registered, but did not testify: Nancy Rainosek and Nick Villalpando, Texas Department of Information Resources; Keith Ingram, Texas Secretary of State)*

DIGEST: CSHB 5 would appropriate \$1.2 billion in general revenue related funds and \$2 million from general revenue-dedicated accounts. The appropriation would fund the Legislature and legislative agencies for fiscal 2022-23 and provide funding to other agencies, contingent on certain legislation related to property tax relief, civics education, foster care capacity, cybersecurity, retired educator pay, bail bonds, and auditable voting machines.

**Legislative funds.** CSHB 5 would appropriate a total of \$315.9 million in general revenue to the Legislature and legislative agencies for fiscal 2022-23, including the following:

- the Senate;
- the House of Representatives;
- the Legislative Budget Board;
- the Legislative Council;
- the Commission on Uniform State Laws;
- the Sunset Advisory Commission;
- the State Auditor's Office; and
- the Legislative Reference Library.

The bill would appropriate each agency's unexpended balances from fiscal 2021 to fiscal 2022 for the same purposes. Unexpended balances from fiscal 2022 would be transferred to fiscal 2023.

**School district property taxes.** CSHB 5 would appropriate \$50 million in general revenue to the Texas Education Agency (TEA) for the Foundation School Program for each fiscal year in the 2022-23 biennium. The funding would be contingent on the enactment of SB 8 or similar legislation to provide a residence homestead property tax exemption for the homestead in the year in which the property was acquired.

**Civics education.** CSHB 5 would appropriate about \$14.6 million in general revenue to TEA for fiscal 2022-23 to implement certain instructional requirements and prohibitions contingent on enactment of SB 3 or similar legislation related to civics and social studies curriculum in public schools.

**Foster care capacity.** CSHB 5 would appropriate \$35 million from the general revenue fund to the Department of Family and Protective Services (DFPS) for each fiscal year in the 2022-23 biennium. The funds would be used to provide supplemental payments to retain providers and increase provider capacity. The appropriated \$35 million would have to be spent in coordination with appropriations provided in Rider 51, Community-based Care Capacity, starting in fiscal 2023. These funds also would have to be

spent in compliance with rate methodology requirements outlined in Section 26 of Article 2 of the fiscal 2022-23 general appropriations act.

The bill also would appropriate \$20 million in general revenue to DFPS for fiscal 2022 to provide targeted foster care capacity grants to address the existing foster care capacity shortage. The grants would have to focus on:

- serving children with the highest level of need;
- expanding certain types of placements and bringing new providers and capacity online; and
- promoting long-term viability of child placements.

All unexpended balances of the \$20 million would be appropriated for the same purposes for fiscal 2023.

By September 1, 2022, DFPS would have to submit a report on the effect of the department's efforts on improving foster care capacity across the state. The report would be submitted to the Legislative Budget Board, Senate Finance Committee, House Appropriations Committee, and each standing committee of the Legislature with primary jurisdiction over health and human services.

**Cybersecurity.** CSHB 5 would appropriate \$17.4 million in general revenue to the Department of Information Resources (DIR) to provide cybersecurity enhancements for the state during fiscal 2022-23. Of that amount, about \$6.5 million would be appropriated for endpoint detection and response, about \$6.9 million for the security operations center, and \$4.0 million for multifactor authentication expansion.

Out of those funds, DIR could employ in fiscal 2022-23 one full-time equivalent (FTE) for endpoint detection and response, seven FTEs for the security operations center, and one FTE for multifactor authentication expansion.

**Retired educator pay.** CSHB 5 would appropriate about \$701 million in general revenue to the Teacher Retirement System of Texas, contingent on enactment of SB 7 or similar legislation providing a one-time

supplemental payment of benefits to retired teachers and school employees.

**Bail legislation.** CSHB 5 would make the following appropriations to the Office of Court Administration (OCA), contingent on SB 6 or similar legislation relating to bail bonds:

- \$1.4 million in general revenue for fiscal 2022 and \$885,798 for fiscal 2023; and
- \$1.5 million for fiscal 2022 and \$462,500 for fiscal 2023 from the general revenue-dedicated electronic filing system account.

OCA would be authorized to employ six full-time FTEs to implement the legislation.

The capital budget authority for OCA would be increased by \$1.5 million from the General Revenue-Dedicated Statewide Electronic Filing System Account No. 5157 for fiscal year 2022, for capital budget items related to the implementation of the legislation.

**Reimbursement for auditable voting machines.** The bill would appropriate \$4.3 million in general revenue to the secretary of state for fiscal 2022 for reimbursements for the retrofitting of certain auditable voting systems, the replacement of systems that could not be upgraded, and the development of secure tracking systems for mail ballots in accordance with HB 3 or similar legislation. Unexpended balances remaining for these purposes for fiscal 2022 would be appropriated for the same purposes for fiscal 2023.

**Budget execution order superseded, effective date.** CSHB 5 would supersede any budget execution order issued under Government Code ch. 317 during August 2021. Authorizations for transfers of appropriations or of money under an order would be void on the effective date of CSHB 5.

The bill would take immediate effect.

SUPPORTERS  
SAY:

CSHB 5 would restore funding to the Legislature and legislative agencies and direct additional appropriations to important state needs such as

property tax relief, civics education, foster care capacity improvement, cybersecurity measures, retired educator pay, bail reform, and the retrofitting of auditable voting systems. As Texas recovers from the effects of the COVID-19 pandemic and regains revenue, the state has and should use extra funds for these state needs.

**Legislative funds.** CSHB 5 would restore funding to the Legislature and legislative agencies after a line-item veto of Article 10 in SB 1 by Nelson, the general appropriations act. The appropriations in the bill would be identical to those in the final version of the budget passed in the regular legislative session and would fully fund the Texas House, Senate, and legislative support agencies. The scope of this bill is only to restore funds agreed to during the regular budgeting process. Any increases to legislative staff pay would be more appropriate to consider in separate legislation.

**School district property taxes.** CSHB 5 would fund property tax relief for certain homeowners by appropriating state revenue to replace reductions in local school tax revenue under legislation being proposed during the special session. The bill would provide \$100 million for fiscal 2022-23 to adjust the residence homestead exemption so that home buyers received this tax relief in the initial year the homestead was acquired, rather than January 1 of the next tax year.

**Civics education.** CSHB 5 would provide \$14.6 million to the Texas Education Agency to develop and implement a civics training program to implement the provisions of SB 3 or similar legislation. The money would ensure that school districts and charter schools have appropriately trained teachers and administrators to implement new social studies curriculum requirements.

**Foster care capacity.** CSHB 5 would allow the Department of Family and Protective Services to improve retention and increase the availability of foster care providers in the state. Many stakeholders have reported an ongoing shortage of foster care providers, particularly among those caring for children with complex behavioral health needs, who often require trauma-informed care provided by qualified professionals. At times, the

provider shortage has become so severe that some children sleep in offices of Child Protective Services as they wait for placement in a safe home.

The shortage of foster care providers can be attributed to several factors. The COVID-19 pandemic slowed recruitment of foster families and delayed court hearings, leaving children without placement for longer periods of time. Also, the ongoing federal lawsuit has increased regulations for providers, causing them to divert time and resources away from providing direct care for children and toward compliance instead. Additional funds are necessary to help recruit and retain qualified providers and ensure children can be placed quickly and effectively in a stable home and receive applicable services.

**Cybersecurity.** CSHB 5 would allow the Department of Information Resources (DIR) to continue enhancing cybersecurity measures for state systems by providing DIR the remainder of its appropriations and FTE requests from the 87th regular session for endpoint detection and response and the security operations center. It also would expand DIR's implementation of multifactor authentication on state systems, thereby protecting these systems from intrusion by bad actors.

**Retired educator pay.** The bill would fund a "13th check" for retired teachers and school employees. In light of better-than-expected state revenue projections, it is appropriate to boost the retirement pay of teachers who dedicated their careers to helping Texas students achieve academically. This one-time payment would provide up to \$2,400 for retired educators and school employees out of state general revenue funds, while not draining investment dollars from the Teacher Retirement System of Texas (TRS) pension trust fund. While some have called for a permanent cost-of-living increase for retired educators, a 13th check is a fiscally sound decision at this time that would help TRS retirees with rising living expenses.

**Bail legislation.** CSHB 5 would allow the Office of Court Administration to implement legislation revising the bail system in Texas. The funding would allow OCA to develop and maintain a public safety report system so that magistrates had full information, including the criminal histories of defendants, when making decisions about bail. CSHB 5 also would

contribute to transparency and accountability in the bail system by funding agency efforts to collect and report data on bail and would help ensure those making bail decisions were qualified by providing funds to develop and approve training courses for those making bail decisions.

**Reimbursement for auditable voting machines.** CSHB 5 would provide the funding needed to reimburse election authorities for the retrofitting of auditable voting systems, in accordance with the provisions of SB 598 as enacted after the 87th regular session. The bill also would provide the necessary funding to reimburse authorities for the cost of replacing voting systems that could not be upgraded and to develop secure tracking systems for ballots voted by mail.

CRITICS  
SAY:

While providing a "13th check" for retired teachers and restoring legislative funding are welcome provisions, CSHB 5 also provides an opportunity to consider a cost-of-living increase for retired teachers and school employees and an increase in legislative staff salaries to match the cost of living in Austin. Most retired educators do not receive Social Security, and at a time of rising inflation, about half of current TRS retirees may never have seen a cost-of-living adjustment. Legislative staff salary increases would amount to a small fraction of overall spending and help attract and retain high-quality employees.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$1.2 billion to general revenue funds and \$2 million to general revenue dedicated funds through fiscal 2023.

**SUBJECT:** Regulating use of abortion-inducing drugs; creating an offense

**COMMITTEE:** Public Health — favorable, without amendment

**VOTE:** 6 ayes — Klick, Allison, Jetton, Oliverson, Price, Smith  
2 nays — Coleman, Zwiener  
3 absent — Guerra, Campos, Collier

**SENATE VOTE:** On final passage, August 11 — 19-10 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Powell, West, Whitmire, Zaffirini)

**WITNESSES:** No public hearing.

**BACKGROUND:** Health and Safety Code sec. 171.061(5) defines "medical abortion" as the administration or use of an abortion-inducing drug to induce an abortion.

Sec. 171.061(2) defines "abortion-inducing drug" as a drug, a medicine, or any other substance, including a regimen of at least two drugs, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the Mifeprex regimen. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

Under sec. 171.061(6), "Mifeprex regimen," "RU-486 regimen," or "RU-486" means the abortion-inducing drug regimen approved by the U.S. Food and Drug Administration (FDA) that consists of administering mifepristone and misoprostol.

The Mifeprex regimen currently is authorized by the FDA to end a pregnancy through 70 days gestation. It also is under the FDA's risk evaluation and mitigation strategy (REMS), which is a drug safety program that the FDA can require for certain medications with serious safety concerns to help ensure a medication's benefits outweigh its risks. Under REMS, the Mifeprex regimen must be dispensed in-person. However, in April this year during the COVID-19 public health emergency, the FDA announced its intentions to exercise enforcement discretion on the dispensing of Mifeprex or its approved generic version through the mail, either by or under a certified prescriber's supervision, or through a mail-order pharmacy under a certified prescriber's supervision.

Under Texas Health and Safety Code sec. 171.063, only a physician may knowingly give, sell, dispense, administer, provide, or prescribe an abortion-inducing drug to a pregnant woman to induce an abortion or enable another person to induce an abortion in the pregnant woman with an abortion-inducing drug that is authorized by the FDA as outlined in the drug's final printed label.

Before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, the physician must:

- examine the pregnant woman; and
- document in the woman's medical record the gestational age and intrauterine location of the pregnancy.

Under sec. 171.063(b), a physician may provide, prescribe, or administer the abortion-inducing drug in the dosage amount defined by the American Congress of Obstetricians and Gynecologists (ACOG) Practice Bulletin as those clinical management guidelines existed on January 1, 2013.

Sec. 171.006(a) defines "abortion complication" as any harmful event or adverse outcome that is diagnosed or treated by a health care practitioner or at a health care facility with respect to a patient on whom an abortion is performed. The term includes several conditions, such as cervical laceration, hemorrhage, infection, death of the patient, incomplete abortion, or an infant born alive after the abortion, among other specified conditions.

Sec. 171.006(c) requires a physician to electronically submit a report to the Health and Human Services Commission on each abortion complication diagnosed or treated by that physician by the end of the third business day after the date on which the complication was diagnosed or treated. Under sec. 245.011, a physician who performs an abortion at an abortion facility must submit a monthly report to the Department of State Health Services on each abortion performed.

**DIGEST:** SB 4 would prohibit a manufacturer, supplier, physician, or any other person from providing to a patient any abortion-inducing drug by courier, delivery, or mail service. The bill would repeal certain references to definitions under current law for the final printed label and abortion-inducing drug regimen approved by the U.S. Food and Drug Administration (FDA). A physician would have to ensure the physician did not provide an abortion-inducing drug for a woman whose pregnancy was more than 49 days (seven weeks) of gestational age.

The bill would expand the types of conditions that qualified as reportable abortion complications. It would create a state-jail felony for violation of the bill's provisions and repeal a reference to the American Congress of Obstetricians and Gynecologists' guidelines in current law.

The current definition of "abortion-inducing drug" would be expanded to include misoprostol (Cytotec) and methotrexate. The bill also would add to the existing definition of "medical abortion" the following terms: medication abortion, chemical abortion, drug-induced abortion, RU-486, and Mifeprex regimen.

**Physician requirements.** The bill would expand the list of actions a physician was required to take before providing an abortion-inducing drug to include:

- ensuring the physician did not provide an abortion-inducing drug for a pregnant woman whose pregnancy was more than 49 days (seven weeks) of gestational age;
- examining the pregnant woman in person;
- independently verifying that a pregnancy existed;

- documenting in the woman's medical record the gestational age and intrauterine location of the pregnancy to determine whether an ectopic pregnancy existed;
- determining the pregnant woman's blood type; and
- documenting whether the pregnant woman received treatment for Rh negativity.

For a woman who was Rh negative, the physician would have to offer to administer Rh immunoglobulin at the time the abortion-inducing drug was administered or used or the abortion was performed or induced to prevent Rh incompatibility, complications, or miscarriage in future pregnancies.

**Consent.** The bill would prohibit a person from providing an abortion-inducing drug to a pregnant woman without satisfying the applicable informed consent requirements under current law.

**Reporting.** The term "adverse event" would be added to the existing statutory definition of "abortion complication" to include, among other specified conditions:

- blood clots resulting in pulmonary embolism or deep vein thrombosis;
- failure to actually terminate the pregnancy;
- pelvic inflammatory disease;
- missed ectopic pregnancy;
- cardiac or respiratory arrest;
- adverse reactions to anesthesia or other drugs; or
- any other adverse event as defined by the FDA's criteria provided by the MedWatch Reporting System.

A physician who induced an abortion or provided an abortion-inducing drug would have to comply with specified reporting requirements under current law.

**Enforcement.** A state executive or administrative official could not decline to enforce the bill, or adopt a construction of the bill in a way that narrowed its applicability, based on the official's own beliefs on the state

or federal constitution's requirements unless the official was enjoined by a state or federal court from enforcing the bill.

**Criminal offense.** For an abortion performed or induced on or after January 1, 2022, a person who intentionally, knowingly, or recklessly violated the bill's provisions would commit a state-jail felony offense (180 days to two years in a state jail and an optional fine of up to \$10,000), which also could be the basis for an administrative violation under current law. A pregnant woman on whom a drug-induced abortion was attempted, induced, or performed on or after that date in violation of the bill would not be criminally liable.

**Construction of bill's provisions.** Nothing in the bill could be construed as creating or recognizing a right to abortion, and nothing in the bill would repeal, replace, or otherwise invalidate existing Texas laws, regulations, and policies.

**Severability.** If any provision or any application of the bill's provisions to any person or circumstance were held to be invalid or unenforceable, it would have to be construed to give the provision the maximum effect permitted by law, unless such a holding was one of utter invalidity or unenforceability, in which case the provision would be severable from others and not affect the remainder or the application of the provisions to other circumstances or persons not similarly situated.

**Other provisions.** The bill would repeal references to definitions under current law for the final printed label and abortion-inducing drug regimen approved by the FDA as well as a reference to the American Congress of Obstetricians and Gynecologists' guidelines.

Except as otherwise provided, the bill would apply only to an abortion performed or induced on or after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the legislative session.

SUPPORTERS  
SAY:

SB 4 would help protect women's lives and reduce the number of abortions in Texas by prohibiting any person from providing abortion-inducing drugs to a patient by mail or delivery service. It would decrease from 70 days (10 weeks) to 49 days (seven weeks) the permissible time frame in which abortion-inducing drugs could be administered.

The U.S. Food and Drug Administration (FDA) currently authorizes the Mifeprex regimen to be provided up to 70 days (10 weeks) of gestation. However, the failure rate and risk of complications with drug-induced abortions increases with advancing gestational age. Reducing the time frame in which abortion-inducing drugs could be administered by repealing references to the FDA and prohibiting abortion-inducing drugs from being provided beyond seven weeks could reduce health risks to women and help save more unborn children.

The bill would help protect women's lives by prohibiting any person from providing abortion-inducing drugs to a patient by mail or delivery service. This would preserve the doctor-patient relationship and ensure the administration of an abortion-inducing drug was supervised by a qualified physician. Abortion-inducing drugs pose serious risks to women and may cause complications requiring immediate medical attention, such as hemorrhaging, blood clots, and pelvic inflammatory disease.

It is necessary to codify in state law requirements for abortion-inducing drugs to be administered in person, in the event federal or telemedicine rules change. The FDA this year announced its intentions to exercise enforcement discretion on the dispensing of Mifeprex or its approved generic version through the mail. Even though the FDA has chosen to exercise discretionary enforcement on the in-person dispensing requirement, Texas maintains an interest in protecting the health and welfare of every woman considering a drug-induced abortion.

Prohibiting abortion-inducing drugs from being dispensed to a patient through mail-order or delivery services also could decrease a woman's risk of receiving the drugs from an abusive partner or the risk for women who are victims of human trafficking of receiving those drugs from traffickers.

The state-jail felony offense would be an appropriate punishment for violators and would incentivize compliance.

CRITICS  
SAY:

SB 4 would reduce a woman's access to reproductive health care by decreasing from 70 days (10 weeks) to 49 days (seven weeks) of gestation the maximum time frame in which an abortion-inducing drug could be administered.

Under current law, the Mifeprex regimen may be provided up to 70 days (10 weeks) of gestation, as authorized by the U.S. Food and Drug Administration. Many women do not find out they are pregnant until after the six-week mark, leaving women little time to make a decision about whether to continue or terminate a pregnancy. By prohibiting drug-induced abortions from being performed beyond seven weeks of gestational age of a woman's pregnancy, the bill could lead some women to use more dangerous alternatives to end a pregnancy.

The bill is unnecessary because Texas state law already requires in-person visits with a physician for an abortion procedure and when dispensing an abortion-inducing drug. The FDA's decision to use discretionary enforcement for the in-person dispensation requirement for abortion-inducing drugs would only affect states that allow telemedicine abortions, which Texas does not. The bill would reaffirm what state law already requires.

The state-jail felony offense for violations would be too punitive and could further intimidate health care professionals involved in abortion care.

OTHER  
CRITICS  
SAY:

SB 4 should give enforcement authority to the Office of the Attorney General to ensure violations were addressed evenly across the state. It also should authorize private citizens to file a cause of action against someone who violates the bill's provisions.

NOTES:

The House companion bill, HB 6 by Klick, was referred to the House Public Health Committee on August 23.